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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057413
Party	Defendant Ellie Nahum
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Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	04/29/2014
Attachments	AMENDED FINAL ANSWER USPTO.pdf(130889 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 4278610

For the Mark: TRAP

Date Registered: January 22, 2013

WILLIAM JONES)	
)	
)	
Petitioner,)	
)	
v.)	
)	
ELLIE NAHUM)	Cancellation No. 92057413
)	
Registrant.)	
)	

Amended Answer of Registrant to Petition to Cancel

Registrant, Ellie Nahum, by and through undersigned counsel, hereby answers each of the allegations of the Petition to Cancel filed by Petitioner William Jones.

Registrant denies Petitioner has been damaged or will be damaged as alleged in the first unnumbered paragraph and therefore denies the allegations.

The numbered Answers herein correspond to the numbered paragraphs set forth in Plaintiff's Petition to Cancel.

1. Registrant admits only that he is the listed owner of United States Trademark Registration No. 4278610 for the word mark, TRAP. Registrant denies that his principal place of business is located at 14935 Addison Street, Sherman Oaks, CA 91403. Applicants new address is 155 W. Washington Blvd., Los Angeles, CA 90015.

2. Registrant admits only that registrant filed an application to register the word mark TRAP as under Section 1(a) of the Lanham Act, 15 U.S.C. §1051(a), on April 9, 2012. Based on that application, Registrant obtained U.S. Registration No. 4278610 which issued on January 22, 2013, for the word mark Trap used in connection with Hats; Jeans; Sweat shirts; T-shirts in International Class 025. Registrant denies all other allegations.
3. Registrant is without knowledge and information to form a belief as to the truth of the allegation set forth in paragraph 3 and therefore denies the allegations. Upon information and belief, Petitioner has not been using TRAP itself as a trademark and did not create the TRAP word mark or logo.
4. Registrant is without knowledge and information to form a belief as to the truth of the allegation set forth in paragraph 4 and therefore denies the allegations set forth in paragraph 4.
5. Registrant admits the first use in commerce date of January 24, 2012 and denies all other allegations in paragraph 5.
6. Registrant is without knowledge and information to form a belief as to the truth of the allegation set forth in paragraph 6 and therefore denies the allegations set forth in paragraph 6.
7. Registrant is without knowledge and information to form a belief as to the truth of the allegation set forth in paragraph 7 and therefore denies the allegations set forth in paragraph 7.

8. Registrant is without knowledge and information to form a belief as to the truth of the allegation set forth in paragraph 8 and therefore denies the allegations set forth in paragraph 8.
9. Deny.
10. Registrant is without knowledge and information to form a belief as to the truth of the allegation set forth in paragraph 10 and therefore denies the allegations set forth in paragraph 10.
11. Deny.
12. Deny.
13. Registrant is without knowledge and information to form a belief as to the truth of the allegation set forth in paragraph 13 and therefore denies the allegations set forth in paragraph 13..
14. Deny.
15. Admit.
16. Deny.
17. Deny.
18. Registrant is without knowledge and information to form a belief as to the truth of the allegation set forth in paragraph 18 and therefore denies the allegations set forth in paragraph 18. .
19. Deny.
20. Deny.

21. Registrant is without knowledge and information to form a belief as to the truth of the allegation set forth in paragraph 21 and therefore denies the allegations set forth in paragraph 21..

22. Deny.

23. Deny.

24. Deny.

25. Deny.

26. Registrant is without knowledge and information to form a belief as to the truth of the allegation set forth in paragraph 26 and therefore denies the allegations set forth in paragraph 26 .

27. Deny.

28. Deny.

29. Deny.

30. Deny.

AFFIRMATIVE DEFENSES

31. Petitioner's claim is barred because Registrant was first in time creating the mark in 2010. Federal and common law trademark rights are clear that the individual who creates and uses a mark first is the proper rights holder of the mark in question.

32. Petitioner's claim is barred by the affirmative defense of genericness. There are a number of similar marks used on similar goods. Thus, the mark TRAP is in a crowded field. Therefore, Petitioner may not have the right to exclude Registrant from Registrant's use.

33. Petitioner's claim is barred by the doctrine of unclean hands. Plaintiff's purported mark was either copied from Registrant or was second in time in 2011 when Plaintiff

states he created the Mark. Plaintiff claims that he created the mark in March of 2011, however Plaintiff had full knowledge and was aware that Registrant had created the mark one year prior. Plaintiff brings cancellation proceeding only after Plaintiff and Registrant's work relationship was terminated, becoming aware of Mark's growing notoriety, and becoming aware that the Mark's products are being sold nationally and worn by celebrities. Plaintiff was an employee and a store manager for original Traphouse Clothing Location on Fairfax Ave. Plaintiff only acquired this position after stating he was a designer and expressed great interest in the Mark to Registrant when they met in 2011. After their work relationship was terminated, Plaintiff attempted to circumvent Registrant common law trademark rights and Mark ownership rights by claiming to be the trademark rights holder to various retailers, online boutiques, and consumers. Plaintiff even went as far as creating online shops, profiles, and social media pages purporting to be the rights owner of the Mark. Plaintiff created unapproved, alternative looking merchandise for sale. Plaintiff engaged in all of these actions while being fully aware that Registrant had created the Mark, applied and was granted business licenses and a tax identification number, rented a store front on Fairfax Ave., and incurring and expending construction costs on the storefront. Plaintiff is bringing this cancellation claim as a "rightful" owner of the Mark while being fully aware that Registrant was the first to create the Mark.

34. Petitioner has not applied for any U.S. Trademark to date, thus Registrant questions whether Petitioner has the intent or capability to seek United States Federal Trademark protection.

35. Upon and information and belief, Petitioner has no evidence of his rights or ownership in the mark, TRAP.

36. Upon and information and belief, Petitioner has no evidence that he created the mark.

37. Upon information and belief, Petitioner has no evidence that he has been using his mark in connection with the Goods in interstate commerce.

38. Upon information and belief, there has been no actual confusion between the alleged mark of the Petitioner and the mark of Registrant.

39. The continuous use of Petitioner's alleged mark is causing injury to Registrant's business plans; is impairing Registrant's rights in his Mark; is inconsistent with Petitioner's alleged rights, and will continue to cause injury to Registrant.

40. Upon and information and belief, Petitioner has no evidence that he used the Mark in interstate commerce as early as June of 2011.

41. Petitioner is not, and was not at the time of the filing of the Registrants' application for the Registration the rightful owner of the claimed mark. Registrant created the mark nearly one year prior to Plaintiff's claimed creation date.

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WHEREFORE, applicant prays the Petition to Cancel be dismissed in its entirety with prejudice, that the Board agree a registration should be maintained by Registrant/ Registrant for its trademark TRAP, and that the Trademark Trial and Appeal Board grant such other relief as it deems just and proper.

Dated: April 29, 2014

Respectfully submitted,

By: /Shahin S. Karimian/
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Attorney for Registrant

CERTIFICATE OF SERVICE

It is hereby certified that on April 29, 2014 a true and correct copy of the foregoing Answer was served and sent by EMAIL to Michael L. Sloan, Attorney for Plaintiff located at 701 N. Brand Blvd., Suite 840, Glendale, CA 91203 UNITED STATES, sloanlegalconsulting@earthlink.net.

Dated: April 29, 2014

By:/Shahin S. Karimian/
Shahin Shawn Karimian
Attorney for Registrant